

The Constitution

Fourth, we believe that this procedure is being advanced to deprive the opposition and, indeed, Parliament of its full rights of amendment and debate. We do not accept that a process accepted by the House as suitable for amending its own internal rules can arbitrarily be deemed appropriate for an address to the sovereign.

Fifth, we believe our practices are quite clear—that concurring in the report on a subject matter outside the House itself leaves the implementation for a later stage.

Sixth, we believe it would be highly improper for the government to go to the Speaker and ask that she sign and engross as a joint address something which is not a joint address. It would be even more improper of the Speaker to sign such a document and thereby put the sign of approval on a misrepresentation of the House's actions.

Finally, we believe that the constitutional soundness of this whole process is extremely dubious, to put it at its mildest, and that an attempt to proceed in this manner will put the Speaker and possibly the Governor General in an invidious and dangerous position.

This is a question of due process, minority rights, the duty of the Speaker to protect minorities against an abuse of the rules, and of possible misrepresentation of the proceedings of this House. We are not prepared to accept the idea that our rules are whatever the government wishes those rules to be.

This proposition, if I may say so with great respect, is sickeningly two-faced. The government has said it would not be acceptable to limit a constitutional debate. The Prime Minister has said that. In reality the government is saying, the longer we debate, the less committee study there will be. It has said there would be no tricks. Behind the backs of the members it published a document laying out the procedural dirty tricks it would not admit to in the House. We are told by Liberal members that this is just a committee reference. In reality the government plans to rewrite the rules once this so-called document reaches the committee. Suddenly the resolution will be born of the reference of the subject matter. I protest this process; we protest this process. It is unconstitutional and what flows from it is doubtful. I hope all members of the House will remember what I have said as we proceed further in this debate.

There are questions about the propriety of section 42. There is a feeling around, and I share it, that the referendum is not dealt from a straight deck, and this is borne out by the answer or non-answer the hon. member for Winnipeg North Centre (Mr. Knowles) received from the Minister of State for Science and Technology (Mr. Roberts). It is being passed off as if the debate was on the bill of rights. I said at the outset that there is no real problem with a statement of rights in Canada, and there is not, but would it not be wise of this House to ensure what particular rights we want to entrench, because if we entrench them those rights cannot be changed quickly or easily. That is important for us to remember.

I had some early troubles with the idea of a bill of rights, and I confess there are feelings in this House among lawyers

and others, as there are among judges and legislators all over Canada, and as there are among legal commentators, about the idea of a bill of rights at all. I had a little difficulty with it; I confess that to you, Mr. Speaker I could as easily argue the case against a bill of rights as I could for a bill of rights.

● (2020)

I know how this argument comes about. There is a tendency in civil law to codify. As the hon. member for Rosedale (Mr. Crombie) said the other day, we have adopted, in the good old Canadian way, two processes. Some rights are codified and some are not codified. Frankly, I do not hold that to be the real issue, but I do say it is important, if we do entrench, that we know what we are entrenching and that we really do entrench protections which not only spell out what the law is, but what the law should be and what we would like the law to be, we must buttress and augment what rights we have always felt flowed from our living in a free society.

Clause 24 of the bill relieves me of the problem of the casting aside of certain rights as a result of the codifying of other rights. My mind is relieved, and it is my belief that if we are satisfied with the wording of the clause we want to entrench, the process of entrenching can be construed not as an abandonment of the common law tradition but as a method by which the common law traditions can be strengthened.

At least that is what I hope we would want. However, given the inflexibility of entrenchment, the wording becomes extremely important.

I want to take a look at clause 1 of the bill, if I have a few moments. Clause 1 of the draft bill is the so-called guarantee of rights. It says:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government.

Any lawyer or anyone else could drive a freight train through that so-called guarantee of rights.

An hon. Member: Amend it!

Mr. Baker (Nepean-Carleton): My friend says, "amend it," and he is right, but let him not stand in this House and say that what is written here is the last word. If we look at native rights and minority language rights, we find that they are imperfection personified. I said to one of my colleagues that they look the tough sections, in any event—as if they were written on an envelope in haste somewhere between Ottawa and the northern parts of Canada when this document was taken up to be reviewed by the Prime Minister.

That is the problem, and I do not have the time to go into the detail today. The Minister of Finance (Mr. MacEachen) said he favoured the view of the Canadian Bar Association on rights. Then why was the right to own property left out? That is part of the Canadian Bar Association's view on rights. Why was that right left out? Is there some reason or other?

The minority language rights reference is not what I thought it was and not as it was represented by the Minister of